CHINA INSURANCE COMPANY LIMITED v. WOH HUP (PTE.) LIMITED

[O.C.J. (Chua J.) April 26, 1977]

[Singapore — Suit No. 31 of 1975]

Tort — Occupiers' liability — Workman electrocuted by live electrical cables on the ground — No proper warning sign — Whether defendants liable for breach of statutory duty — Building Operations and Works of Engineering Construction Regulations, 1971, regs. 4(1) & 16(1) — Workmen's Compensation Act, (Cap. 130), ss. 2 & 20.

Tort — Common law liability — Duty of care — "Occupier" — Meaning of — Whether defendants negligent at common law.

S., a labourer employed by *C.M.* was electrocuted when the wheelbarrow he was pushing went over the live electrical cables running along the ground across the path. This occurred at a building operations site known as Woh Hup Complex, Singapore. The electrical cables were used for supplying electricity to a motor driving a concrete pump. The work-site was the extension car park annexed to the Woh Hup Complex. *C.M.* was carrying on some interior decorating work for the owner of a flat on the top floor of the said complex.

The plaintiffs (insurers of *C.M.*), having paid $11,160 in respect of the death of the deceased on claims under the Workmen's Compensation Act, sought to be indemnified by the defendants and to recover the said sum of $11,160 by rights of subrogation.

The defendants were the main contractors for the construction of the whole of the complex and the defendants sub-contracted the construction work of the extension car park to one *V.S.* The defendants had overall supervision over the sub-contractor.

The plaintiffs alleged that the death of the deceased was due to the negligence of the defendants in laying live electrical cables across the path without proper protection. The plaintiffs also claimed that this was a breach of a statutory duty by the defendants in failing to warn the deceased and others by posting proper warning signs that such an electrical circuit existed as required by reg. 16(1) of the Building Operations and Works of Engineering Construction Regulations, 1971. Reg. 4(1) indicated that the regulations were intended only for the protection of workmen employed by the contractor or employer concerned and as the deceased was not so employed (by the defendants) the regulations were not applicable in this case. Hence, the main issue was whether the defendants were liable at common law for the death of the deceased.

Held, allowing the plaintiffs' claim: (1) "occupier" denotes a person who had sufficient degree of control over premises to put him under a duty of care towards those who came lawfully on the premises;

(2) the defendants were occupiers of the work-site where the accident occurred. They had occupational control of the work-site and were under a duty of care to the deceased;

(3) there were no "danger" or warning signs at the work-site and the defendants had failed in their duty of care.

CIVIL SUIT.

Peter Lee for the plaintiffs.

Goh Joon Seng for the defendants.

Chua J.: On February 19, 1973, one Sitaram s/o Shonlal (the deceased), a labourer employed by Cheng Meng Furniture Co. (Pte) Ltd. (Cheng Meng), was pushing a wheelbarrow containing some bags of cement along a path at a building operations work-site known as Woh Hup Complex at Golden Mile, Beach Road, Singapore, when the wheelbarrow went over live electrical cables running along the ground across the path and the said Sitaram was electrocuted. The electrical cables were used for supplying electricity to a motor driving a concrete pump. The work-site was the extension car park annexed to the Woh Hup Complex.

The plaintiffs are an insurance company. The plaintiffs as insurers of Cheng Meng have paid out a sum of $11,160 in respect of the death of the deceased on claims under the Workmen's Compensation Act.

The plaintiffs say that they are entitled to be indemnified by the defendants and to recover the said sum of $11,160 by rights of subrogation and under the Workmen's Compensation Act and the plaintiffs claim against the defendants the said sum of $11,160.

The following facts are not in dispute:

(1) At the material times the defendants were the main contractors in respect of the construction of the Woh Hup Complex and the construction work of the extension car park was sub-contracted to Mr. Voon Siong;

(2) The concrete pump was at all material times owned by defendants and used in connection with the construction work at the extension car park;

(3) The electrical cables were used for supplying electricity to the motor driving the concrete pump;

(4) The deceased was a labourer employed by Cheng Meng and that he died on February 19, 1973, as a result of electrocution;

(5) That the plaintiffs as insurers of Cheng Meng have on behalf of Cheng Meng paid out the sum of $11,160 under the Workmen's Compensation Act in respect of the death of the deceased.

The parties have agreed that the Act applicable to this case is the Workmen's Compensation Act, Cap. 130 (the Act).

The accident to the deceased occurred in the following manner.

On February 19, 1973, at 11.45 a.m. five employees of Cheng Meng, including the deceased, went in a lorry to the Woh Hup Complex to deliver some bags of cement to a flat on the top floor of the Complex where Cheng Meng was carrying on some interior decorating work for the owner of the flat. The bags of cement were unloaded from the lorry and placed on a wheelbarrow, 4 bags at a time, and wheeled to a place near the lift. The route taken was along a path through the work-site and up a wooden ramp to where the lift was. On the fourth trip to the lift the deceased was pushing the wheelbarrow with two other labourers helping him and near the foot of the wooden ramp the accident happened. The deceased gave a cry and collapsed. Basant Singh one of the labourers tried to pull the wheelbarrow away and he got an electric shock.

Work had been going on in the flat for two weeks before February 19 and during the two weeks things had been brought up to the flat by employees of Cheng Meng almost daily.

According to Basant Singh (PW3) they were told by the security guard to use that route to deliver the goods and they used the same route everytime they

went there. He also said that there was no warning sign and no barrier there and there was no sign prohibiting them from entering. He also said that everytime they went there they had to ask the permission of the security guard on duty to use the lift.

After the accident Mr. Tan Hwa Peng (PW1), a factory inspector attached to the Ministry of Labour, visited the scene at 3 p.m. He saw some electrical cables under the wheelbarrow. He noticed that there was some damage to the cables — the insulation had been broken and the conductors within the cables were exposed. The cables originated from a switch box and from the switch box they led to the concrete pump and the cables were lying on the ground just in front of the wooden ramp. He said that the "Danger" sign in Chinese placed near the cables appearing in photo Exhibit P1 was not there when he visited the site.

Mr. Tan Seng Siew (PW2), an electrical inspector in the Electricity Dept. of the PUB, visited the scene at 2.45 p.m. on the day of the accident. He saw that the cables came from a switch box and they ran first along the wall and then came down to the ground. He cannot recollect if the "Danger" sign in Chinese appearing in photo Exhibit P1 was there. As far as he could recollect there was no barrier to prevent people from entering the area and there was no sign prohibiting people from entering the area.

Mr. Eric Lee Choon Yong (PW4), who was employed as foreman in February 1973, by the defendants, said that his job was to supervise and coordinate the construction work that was going on at that time at the Woh Hup Complex and that some of the works were sub-contracted to others to do; that at that time the defendants were not directly involved in the work carried out at the work-site where the accident took place; that the path taken by the deceased up the wooden ramp was one of the routes that people used to take goods to the lifts; that anyone could use the path if they wanted to; that he had no occasion to stop anyone from using that path and that he had not stopped anyone using it; that he did not know if anyone had been stopped using the path; that he could not recall if the cables were lying on the ground before the accident and that he could not recollect if the "Danger" sign in Chinese appearing in photo Exhibit P1 was near the cables before the accident took place.

The plaintiffs allege that the death of the deceased was due to the negligence of the defendants in laying live electrical cables across the path without proper protection, fence or guard and to a breach of statutory duty by the defendants in failing to warn the deceased and others by posting and maintaining proper warning signs in the four official languages that such an electrical circuit existed as required by Regulation 16(1) of The Building Operations & Works of Engineering Construction Regulations, 1971 (the Regulations).

The evidence adduced by the defendants was this. They were the main contractors of the Woh Hup Complex and they sub-contracted all the construction work to Voon Siong. The cables connection from the switch box to the concrete pump was done by Voon Siong's servants. The cables ran along the wall from the switch box and at the site where the accident took place the cables were hung up on poles six feet above the ground up to the concrete pump. The switch box supplied electricity not only to the concrete pump but also to other equipments and to the quarters of Voon Siong's workers with the result that the switch had to be left on all the time. On the day of the accident no concreting work was being done, in fact concreting work had stopped a few days previously. Mr. Yong Mee Hin (PW1), a director of defendant company, last saw the cables on February 16, 3 days before the accident, and the cables were strung up. There were signs at the work-site like "Work in Progress", "No Trespassing" and "Danger" displayed at the entrance and other prominent places. The employees of Cheng Meng should have used the paved road to get to the lift. The defendants did not employ any security guard at the work-site. During the construction of the extension car park the work-site was under the control of Voon Siong.

It is first submitted on behalf of the defendants that since the plaintiffs claim by right of subrogation the proper plaintiff should be Cheng Meng. The short answer to this submission is that section 20(b) of the Act enables the plaintiffs to sue in their own name.

It is next submitted on behalf of the defendants that there is no right of action in this case for breach of statutory duty as there was no breach of statutory duty towards the deceased as he was not a person for whose benefit the Regulations were made. I agree with this submission.

Regulation 4(1) of the Regulations provides:

"It shall be the duty of every contractor and every employer who is undertaking any of the operations or works to which these Regulations apply — (a) to comply with such of the requirements of these Regulations *as affect him or any person employed by him*...."

It is clear that the Regulations are intended only for the protection of workmen employed by the contractor or employer concerned and a person not so employed has no right of action as a result of a breach of the Regulations.

The main question in this case is whether the defendants are liable at common law for the death of the deceased.

It is submitted on behalf of the defendants that they were not the occupiers of the work-site where the accident took place. In my view there is no substance in this submission.

"Occupier" (as Lord Denning said in *Wheat* v. *E. Lecon & Co. Ltd.*[1]) is simply a convenient word to denote a person who had sufficient degree of control over premises to put him under a duty of care towards those who came lawfully on the premises. Further on in his judgment Lord Denning said (at p. 578):

"Wherever a person has a sufficient degree of control over premises that he ought to realise that any failure on his part to use care may result in injury to a person coming lawfully there, then he is an 'occupier' and the person coming lawfully there is his 'visitor': and the 'occupier' is under a duty to his 'visitor' to use reasonable care. In order to be an 'occupier' it is not necessary for a person to have entire

control over the premises. He need not have exclusive occupation. Suffice it that he has some degree of control. He may share the control with others. Two or more may be 'occupiers'...."

In *Salmond* on Torts, 14th ed. (1965) p. 372, it is said that an 'occupier' is 'he who has the immediate supervision and control and the power of permitting or prohibiting the entry of other persons.' This definition was adopted by Roxburgh J. in *Hartwell* v. *Grayson, Rollo and Clover Docks Ltd.* and by Diplock L.J. in the present case. There is no doubt that a person who fulfils that test is an 'occupier'. He is the person who says 'come in.' But I think that test is too narrow by far. There are other people who are 'occupiers,' even though they do not say 'come in.' If a person has any degree of control over the state of the premises it is enough."

What are the facts in this case. The defendants were the main contractors for the construction of the whole of the Woh Hup Complex and the defendants sub-contracted the construction work of the extension car park to Voon Siong. The defendants had overall supervision over the sub-contractor and their foreman (PW4) had access to the extension car park and his job was to supervise and co-ordinate the construction work that was going on there.

In my view the defendants were occupiers of the work-site where the accident took place.

Next it is submitted that the deceased was a trespasser and the defendants have no duty to take reasonable care for his protection even from concealed danger. On the facts of this case I am of the view that the deceased was not a trespasser but a licensee. I accept the evidence of Basant Singh (PW3) that they were told to make use of the path to take the bags of cement to the lift. The defendants know that Cheng Meng was doing work for the owner of the flat and that Cheng Meng's workmen were carrying things to the flat and were going through the work-site. The deceased went there lawfully to bring cement to the flat.

The defendants say that if the deceased was a licensee the only duty owed by them to him was to warn him of concealed dangers actually known to them but neither known nor obvious to the deceased. It is submitted that the cables lying on the ground were large and not concealed and could easily be seen and was not a concealed danger.

There is no dispute that on the day of the accident the cables were lying on the ground across the path. The concealed danger here is not the cables but the electricity which runs along the cables. The concrete pump was not in use and one would not expect that the cables were alive even if one were to see the cables. The evidence of the defendants is that the concrete pump had not been used for a few days prior to the accident. One would except that electricity to the concrete pump would be switched off when the concrete pump was not in use. The reason given by the defendants why this was not done was because the switch box supplied electricity to other parts of the work-site, but that does not mean that the electricity supply to the concrete pump could not be cut off.

The defendants were under a duty of care to the deceased. The defendants had occupational control of the work-site and they were able to see the state of the work-site and what was being done or omitted therein. If anything was wrong they could take steps to rectify it or have it rectified. If there were any danger they could protect the people making use of the path by erecting a barrier or giving a warning or otherwise that there were live cables there.

I find that there was no "Danger" sign in Chinese placed near the cables before the accident. Even if the "Danger" sign was there that was inadequate as it was only in Chinese. I also find that there was no barrier and no signs prohibiting persons from entering the work-site. The evidence is that any person could make use of the path up the wooden ramp. In fact the defendants have failed in their duty of care.

I find that the deceased was not in any way to be blamed for the accident.

For these reasons there must be judgment for the plaintiffs in the sum claimed and costs.

Order accordingly.

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